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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| Promotion of Competitive Networks in Local Telecommunications | ) | WT Docket No. 99-217 |
| Wireless Communications Association International, Inc. Petition for Rulemaking To Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services | ) | |
| Cellular Telecommunications Industry Association Petition for Rulemaking and Amendment of the Commission's Rules To Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes And Assessments | ) | |
| Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 | ) | CC Docket No. 96-98 |

**ADDITIONAL REPLY COMMENTS FOR MONTGOMERY COUNTY, MARYLAND**

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December 13, 1999

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**ADDITIONAL REPLY COMMENTS FOR MONTGOMERY COUNTY, MARYLAND**

## I. INTRODUCTION

These comments are submitted on behalf of Montgomery County, Maryland (the "County") in addition to the joint reply comments filed by the National Association of Telecommunications Officers and Advisors (NATOA), Montgomery County, and others

("Reply Comments of the Local Government Coalition"). In the opening Comments, numerous telecommunications industry parties called for Federal Communications Commission ("Commission') preemption, elimination, or limitation of the taxation authority of local governments. Additionally, the Montgomery County, Maryland 'cell phone' tax was cited by the Commission in the NOI.[1] The County hereby replies directly to the Commission's reference and to comments made on the issue of preemption of local taxation authority.

## II. THE COMMISSION HAS NO LEGAL AUTHORITY TO PREEMPT LOCAL TAXES

The County is a party to the Reply Comments of the Local Government Coalition. The County strongly concurs with the arguments presented in those joint reply comments.[2] Under section 601(c)(2) of the Communications Act, the Commission has no authority to preempt State or local tax laws. The intent of Congress was clear – no portion of the Communications Act shall be construed to "modify, impair, or supersede" any State or local tax law.[3] The Commission is specifically precluded from "authorizing any modification, impairment, or supersession" of any State or local tax law.[4] Thus, any concerns about "unreasonable or

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[1] NOI at ¶ 83.

[2] Reply Comments of the National Association of Counties, the United States Conference of Mayors, the National Association of Telecommunications Officers and Advisors, the Texas Coalition of Cities on Franchised Utility Issues (TCCFUI), PROTEC, the City of Dearborn, Michigan, the District of Columbia Office of Cable Television and Telecommunications, Montgomery County, Maryland, Prince George's County, Maryland, the City of St. Louis, Missouri, the City and County of San Francisco, and the City of Indianapolis, Indiana.

[3] 47 U.S.C. § 601(c)(2).

[4] *Id.*

discriminatory tax burdens"[5] must be addressed to the State legislature or local government authority – not to a federal commission that has no legal authority whatsoever in these matters.

## III. LOCAL GOVERNMENTS CONTINUOUSLY BALANCE TAX BURDENS AND NEED FOR PROVISION OF VITAL SERVICES.

The Commission itself recognized that "assessment and collection of taxes and other fees is a vital function of State and local governments, indeed a necessary one to support all of those governments' other functions."[6] Local taxes pay for schools, police, street repair and maintenance, and other vital community services. Local governments must decide how to make up for budget shortfalls, particularly during times when tax revenues decrease and demand for the need for government services increases. Contrary to the comments of Sprint,[7] Montgomery County is keenly aware that its taxes must pay for services that maintain an acceptable quality of life for residents, such as public schools, public safety and human services. At the same time, tax burdens that are too high will disadvantage the County in competing with other jurisdictions for jobs, residents and businesses. The County "understands this phenomenon" quite well.[8] The County does not need the Commission to "share its experience" or to "explain [tax policies] to local authorities."[9]

Local governments face tough tax and spending choices. Every tax imposed, whether it be a property, income, business, sales, excise, or utility tax, must be paid for by a local

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[5] NOI at ¶ 84.

[6] NOI at ¶ 81.

[7] Sprint at 13.

[8] *Id.*

[9] *Id.*

corporate or private citizen. Different taxes affect different constituencies. Reducing property taxes helps homeowners, but not renters. Increasing business taxes may decrease tax payments from residents, but may cost jobs and discourage retail outlets. Elected officials are held accountable for their decisions by their constituents. There is no one-size-fits-all tax plan that be can imposed from a non-elected federal body that will be responsive to the needs of every local government.

## IV. THE MONTGOMERY COUNTY CELL PHONE TAX ILLUSTRATES THE WISDOM OF LEAVING LOCAL TAX POLICY TO LOCAL ELECTED OFFICIALS.

Fair-minded, well-intentioned elected officials may honestly disagree over which taxes to assess and which taxes to eliminate. The case of the Montgomery County cell phone tax illustrates the important local dynamics that the Commission must respect. The cell phone tax was passed by the County Council overriding the veto of the County Executive in 1996. In 1998, the Council decided by resolution not to impose the tax at the urging of the County Executive. The tax imposed a flat 92.5 cent monthly tax on wireless phones billed to Montgomery County addresses. The tax generated approximately $2.5 to $3 million dollars annually and affected approximately 200,000 County residents a year.

During the three years that the cell phone tax was in place, the County saw an explosive expansion – not a decline – in both the number of wireless phone users, and the number of wireless service providers. A robust, competitive market for wireless services developed during that time. The number of competitive providers increased from two to seven providers. More than 200 applications for antenna sites were approved. Additionally, the wireless service rates for Montgomery County residents and businesses are among the lowest, and most competitive in the nation. Thus, there is no evidence that this particular local telecommunications tax in any way whatsoever inhibited the growth and development of competitive networks. All of the tax-related comments submitted in this NOI proceeding pointed merely to the *existence* of local and State taxes, but not one comment provided any evidence that a State or local tax policy had created a barrier to the growth of competitive networks.

Some County officials opposed the creation of the cell phone tax, arguing that cell phones were not luxury items, and that a cell phone tax would label the County as unfriendly to new technology. Proponents argued that a tax on phone service was a long-accepted form of taxation and that a cell phone is a phone like any other. Failing to tax cell phones unfairly disadvantaged wireline phones.

It doesn't matter whether one agrees with the Montgomery County cell phone tax or not. The point is that local government does a good job weighing the effects – both the benefits and disadvantages – of any particular tax. The Montgomery County cell phone tax debate illustrates why the Commission can confidently follow the wisdom of Congress and stay out of the issue of local taxation. Local government responds to the market place, to rates, to competition from surrounding jurisdictions, to quality of life, and to fair competition concerns.

In the case of Montgomery County, the Council's action on the cell phone tax in 1998 was also accompanied by small reductions in personal income taxes and property taxes. But these tax cut proposals meant that the County could not fund all $17 million dollars worth of new spending requests presented to the County Council. For example, a proposal to fund a $3 million dollar-a-year expansion of the County's recycling program – an amount equal to the amount of revenue generated by the cell phone tax – was not funded for that year.

Local governments must make choices about which items to tax and which programs to fund. In the case of the cell phone tax, the duly elected local representatives of the citizens of Montgomery County determined that not imposing the cell phone tax was a greater priority than other spending priorities. This is why Congress specifically preserved taxation authority for local governments. Congress is aware of the tough choices that democratically elected government bodies must make in setting tax policy. These legislative bodies must be free to consider all sources of revenues, and not be forced to subsidize telecommunications providers at the expense of local residents or other community businesses.

## V. CONCLUSION

Telecommunications businesses are businesses like any other - paying taxes is part of doing business. It is not the place of the Commission to interfere with this democratic process. National corporations may prefer State or federal tax administration to tax policy set at the local level. But tax policy must be located where spending decisions are made. The Commission has no authority to modify, impair, or supersede State and local tax laws. The Commission should not, in the name of promoting competition, consider industry proposals that challenge constitutional, statutory, and political precedents about how voters can best control the taxing and expenditure policies of their government.

For the reasons indicated above, the Bureau should leave inquiries into State and local tax policies to the elected bodies legally authorized to act in such matters.

Respectfully submitted,

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